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December 1, 2022

VIA ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: *Krohnengold et al. v. New York Life Inc. Co. et al.*, No. 1:21-cv-01778-JMF

Pursuant to the Court's Order dated October 19, 2022 ("Case Management Order"), ECF No. 77, the parties submit the following joint status report regarding the above-referenced matter. As discussed below, the parties are currently working cooperatively regarding discovery, and do not believe there is a need for a case conference at this time.

Pending motion. As the Court is aware, Defendants have filed a partial motion to dismiss Plaintiffs' claims relating to the Fixed Dollar Account in the New York Life Insurance Employee Progress Sharing Investment Plan ("Employee Plan") and the New York Life Insurance Company Agents Progress Sharing Plan ("Agents Plan") (together, the "Plans"). *See* ECF No. 66. That motion remains pending.

Status of Discovery. Consistent with the Court's Case Management Order, the parties are proceeding with discovery while Defendants' partial motion to dismiss is pending, but are focusing at this time on discovery that would take place regardless of whether the claims with respect to the Fixed Dollar Account proceed or are dismissed. *See* ECF No. 77 at 7. Specifically, the parties are proceeding as follows:

- Plaintiffs previously served Requests for Production on September 19, 2022. Defendants responded to those requests on November 2, 2022, and anticipate beginning to produce documents in response to those requests in the month of December.
- For purposes of Defendants' responses to the Requests for Production, the parties have agreed that Defendants' production obligation at this time will be limited to (1) the Plans' governing documents; (2) the Plans' summary plan descriptions; (3) the Plans' investment policy statements and/or guidelines; (4) any charters regarding the Defendant Investment Committee or its predecessor, the Defendant Board of Trustees; (5) non-privileged agendas and minutes for Committee/Board meetings during the

subject period;¹ (6) non-privileged materials reviewed by the Committee/Board at or in connection with such meetings; (7) applicable insurance policies effective during the Subject Period that may provide coverage for claims in this litigation; (8) relevant service provider agreements, (9) participant disclosures, (10) Plaintiffs' personnel files and account statements, and (11) fiduciary training materials. Defendants will not produce while the motion to dismiss is pending such documents that concern only the Fixed Dollar Account..

- Plaintiffs served Interrogatories on November 18, 2022 pursuant to the Court's Case Management Order, *see* ECF No. 77 at 3. The parties have mutually agreed that Defendants' responses to these Interrogatories will be due December 23, 2023.
- Defendants served ten sets of Requests for Production and Interrogatories (one for each Plaintiff) on November 18, 2022, pursuant to the Court's Case Management Order, *see* ECF No. 77 at 3. The parties have mutually agreed that Plaintiffs' responses to those Requests and Interrogatories will be due January 18, 2023.
- The parties exchanged initial disclosures in the meantime on November 18, 2022, pursuant to the Court's Case Management Order. *See* ECF No. 77 at 2.
- The parties are in the process of negotiating search parameters for emails and electronically stored information ("ESI"). Defendants anticipate providing their proposed custodians and search terms on or before December 9, 2022. Plaintiffs will promptly review Defendants' proposal and respond in a timely fashion thereafter.
- The parties have agreed to the terms of a stipulated ESI Protocol and Protective Order, which the Court entered on November 18, 2022. *See* ECF Nos. 83, 84.

The parties will provide a further Status Report on February 1, 2023, pursuant to the Court's Case Management Order. *See* ECF No. 77 at 7.

Respectfully submitted,

/s/ James O. Fleckner

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¹ Defendants will not redact information about the Fixed Dollar Account from Committee/Board agendas, minutes, and materials produced while the motion to dismiss is pending. However, Defendants will withhold from production at this stage agendas, minutes, and materials from Committee/Board meetings that solely concern the Fixed Dollar Account, and the same types of documents from a limited number of Committee meetings that focused on the Fixed Dollar Account and had a relatively minimal discussion of the MainStay Funds.

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